IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.8.2005

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.25678 of 2004
and
WP.M.P.nos.31208 & 31209 of 2004

....

Chetiammal

... Petitioner

vs.

1. The State of Tamil Nadu,
   rep. its Chief Secretary,
   Fort St. George, Chennai-9.

2. The Home Secretary,
   Fort St. George, Chennai-9.

3. The Collector,
   Salem District, Salem.

4. The Revenue Divisional Officer,
   Mettur, Salem District.

5. The Director General of Police,
   Mylapore, Chennai-4.

6. The Director,
   Central Bureau of Investigation,
   New Delhi.

7. The Superintendent of Police,
   Salem.

... Respondents.

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W.P.filed under Article 226 of the Constitution of India for the issue of a writ of Mandamus as stated therein.

For petitioner : Mr.P.V.S.Giridhar
For respondents: Mr.S.Venkatesh, Spl.G.P.
Mr.N.Chandrasekaran for R6

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ORDER

The writ petition is filed for the issue of a writ of Mandamus directing the respondents 1 to 5 to pay to the petitioner a compensation of a sum of Rs.10,00,000/- and to prosecute the delinquent police officials by entrusting the investigation to the 6th respondent and also to take disciplinary action against the police personnel and others responsible for the wrongful confinement, illegal detention, torture, ill-treatment and the murder of the husband of the petitioner.

2. The case of the petitioner, as culled out from the affidavit filed in support of the petition, is as follows:-

2.1. The petitioner is the wife of one Karnan, a labourer in brick kiln. The said Karnan, against whom several cases were pending, had a brawl with one person in a wine shop on 30.11.2003. When Tolasampatti police came to apprehend him, there was a wordy altercation between the police and Karnan and he ran away from the scene, but was apprehended later. The Police Officials belonging to Taramangalam and Omalur tortured him brutally.

2.2. On 1.12.2003 he was taken to Omalur Government Hospital where he was treated for injuries. Thereafter, Inspector Asaithambi and Sub Inspector Ashokan attached to Omalur Police Station and other four policemen blind-folded him and after tying his hands and chaining his legs separately, took him to an undisclosed location, put him in an underground chamber and assaulted brutally.

2.3. Thereafter, on 9.12.2003, Karnan was produced before the Court as if he was arrested on the earlier day suppressing the illegal custody between 1.12.2003 and 9.12.2003, and he was remanded to Central Prison, Salem. On 30.12.2003 the petitioner had an opportunity to meet her husband, when he was brought to Court and at that time, he narrated what had happened. On 27.1.2004 when the petitioner met him when he was brought to Court, he informed her that the police had beaten him again and got his signature in a blank paper. He apprehended that something would happen to him in future.

2.4. On 21.2.2004, the father-in-law of the petitioner was also taken by police who detained him for no reason. Inspector Asaithambi threatened her father-in-law that if Karnan did not accept all the crimes, he would lodge cases against all the members of the family.

2.5. On 24.2.2004, the Assistant Superintendent of Police interrogated her husband. Later, the Superintendent of Police also visited the police station in whose presence, her husband was beaten up. Then, her father-in-law was released and her husband Karnan was taken in a jeep and he was produced before the Court. Thereafter, he was taken

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to an isolated place near Christian graveyard near Omalur Pagalpatti Road and killed him by shooting.

2.6. Suppressing the true events, the Inspector of Police, Omalur lodged a complaint describing it as an encounter. According to the police, the petitioner's husband removed the revolver from Sub Inspector Ashokan and when he was about to shoot, the Inspector, by way of self defence, fired at him three rounds from his pistol, which is not true.

2.7. There are strong reasons to believe that the conspiracy to kill her husband in an encounter was hatched at the behest of the Superintendent of Police. When the family members went to give a complaint to the third respondent, they were prevented and assaulted by the police. However, the sister of deceased preferred a complaint to the third respondent. The fourth respondent conducted an enquiry, but in a biased manner. Complaints were made to Human Rights Commission also. But, no action has been taken against the police personnel who tortured the husband of the petitioner. It is a mandatory duty on the part of the respondents 1 to 5 to safeguard the life and dignity of citizens and to prevent torture and harassment in custody and having failed to do so, they are liable to pay compensation to the petitioner. In these circumstances, the petitioner has filed this writ petition with the above prayer.

3. Concededly, notice was served on the respondents, but they have not chosen to file any counter affidavit traversing the serious allegations made in the affidavit filed by the petitioner. However, today, the 7th respondent, the Superintendent of Police,Salem, namely, R.Arumugam, I.P.S. who is presently holding the office of the 7th respondent has filed a counter affidavit on behalf of the respondents. Therefore, the affidavit filed by the 7th respondent may be taken as filed on behalf of all the respondents.

4. In the counter affidavit, the respondents have stated as under:-

4.1. The husband of the petitioner, by name, Karnan was involved in number of crimes. On 30.11.2003 when the police was about to arrest him in connection with a brawl in wine shop, he caused injuries to police Head Constable and escaped from the place. Later he was apprehended.

4.2. If there was any torture at the hands of police, the husband of the petitioner would have informed the same while he was produced before the Magistrate. The father of Karnan was never taken to the police station as alleged by the petitioner. The deceased was treated well with humane and proper dress.

4.3. While returning from court after remand, the deceased insisted to permit him to attend to his nature's call, and when he was allowed to

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do so, he stealthily snatched the revolver from the Sub Inspector and attempted to shoot at him. The Inspector warned him not to do so, but, when the deceased did not yield to the warning, the Inspector fired at him to protect the life of Sub Inspector and also his own life. It is not a murder as alleged in the writ petition.

4.4. Enquiry was conducted by the Revenue Divisional Officer in a proper manner. The Deputy Superintendent of Police of State Human Rights Commission visited for enquiry along with his official and not with the Inspector Asaithambi as alleged by the petitioner. The petitioner has made such averments to divert the attention of the Court. The petitioner is not entitled to claim any compensation. The petitioner and some others have moved the State Human Rights Commission for compensation and hence, it would amount to parallel proceedings.

5. Even though WP.M.P.Nos.31208 and 31209 of 2004, filed for a direction to respondents 1 to 5 to initiate disciplinary action against the delinquent police officials and also for a direction to the first respondent to pay a sum of Rs.2 lakhs as interim compensation, came up for hearing yesterday, after finding that the allegations made against the respondents and the relief sought for by the petitioner cannot be kept pending indefinitely as it would amount to denial of justice and the further delay would also hamper the investigation itself, the matter was adjourned today, only at the request of the learned Government Advocate.

6. But, today, learned Government Advocate, besides filing the counter affidavit sworn to by Mr.R.Arumugam, I.P.S., Superintendent of Police, Salem District, 7th respondent herein, has only reiterated the stand taken by the 7th respondent in the counter affidavit.

7. I have carefully considered the averments made in the affidavit as well as the counter affidavit and the submissions made on behalf of both sides.

8. It is unfortunate that in the matter where such very serious allegations are made against the respondents 1, 2, 5 and 7, namely, the Chief Secretary, the Home Secretary, the Director General of Police and the Superintendent of Police, Salem, the 7th respondent has alone chosen to file an independent counter affidavit. Even though others have been served with notice in the writ petition, they have not filed any independent counter affidavit. But, they have adopted the averments made in the counter affidavit filed by the 7th respondent, who, in the counter affidavit, has denied the averments regarding illegal custody and torture meted out by the deceased at the hands of the police officials.

9. Even though the entire counter affidavit filed by the 7th respondent also on behalf of respondents 1, 2 and 5 proceeds as a bald

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denial of the averments made in the affidavit filed in support of the writ petition, there is no iota of reference to the investigation on the allegations against the officers concerned in the complaint dated 26.2.2004 made on behalf of the petitioner, addressed to the Collector with reference to the alleged illegal detention, torture, harassment and the encounter resulted in the death of Karnan, husband of the petitioner. It would only mean that the respondents 1 to 5 have only chosen to deny the allegations made by the petitioner, but not to investigate into the complaint, which necessitates this Court to give appropriate direction for an alternative recourse to investigate into the complaint of the petitioner.

10. Learned Government Advocate, during the course of his arguments, submitted that since the complaint preferred by the father-in-law of the petitioner is pending before the State Human Rights Commission, no writ will lie, placing reliance on the Division Bench judgment of this Court reported in 2005(3)CTC 673 (Alliraj Gounder v. The Inspector of Police). He also relied upon the decision of the Supreme Court reported in 1997 Cri.L.J.63 (C.B.I v. Rajesh Gandhi) wherein it was held that the accused cannot have a say who should investigate the offence he is charged with. In the instant case, the petitioner is not an accused, but a victim who complains against the alleged illegal detention, torture and harassment of her husband at the hands of the respondent police. Therefore, in my considered opinion, the ratio laid down in both the decisions relied upon by the learned Government Advocate are not applicable to the facts of the case.

11. On the other hand, it is a settled law that in a democratic country when a citizen makes serious allegations and accusations on the uniformed State force, it would be desirable in the larger interest of justice to entrust the investigation to C.B.I. forthwith so as to assure the investigation credibility (R.S.Sodhi v. State of U.P. (1994 Supp (1) SCC 143).

12. Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to public interest as well as the interest of justice.

13. While the petitioner has made serious allegations against the respondents, the same are denied by the respondents in the counter affidavit. This Court, however, cannot act as a fact finding body on the allegations and counter allegations made, exercising the jurisdiction under Article 226 of the Constitution. Therefore, it is more appropriate for this Court to refer the matter to be investigated independently so as to arrive at a correct conclusion and to proceed in accordance with law. Accordingly, the investigation of the case of impugned encounter which resulted in the death of Karnan is handed over

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to the 6th respondent, C.B.I.

14. Of course, I am careful enough to state that the order should not be read as a reflection on either the local police or the State Government but that it is actuated by the sole object of ensuring that the outcome of the investigation whatever it be, is not suspect in the eyes of the people including the family members of the deceased in the encounter. Further, the order is not only in the interest of fair and impartial investigation, but also in the interest of the State police so that there may not remain any lingering doubt regarding the credibility of the investigation.

15.1. With the above observations, the respondents 1 to 5 are directed to entrust the investigation with regard to the impugned encounter which resulted in the death of one Karnan, husband of the petitioner to the 6th respondent, C.B.I. with further direction to the 6th respondent, C.B.I. to investigate the allegations and accusations made regarding the wrongful confinement, illegal detention, torture and murder in encounter by the State Police, and to proceed strictly in accordance with law.

15.2. All the records connected with the impugned encounter shall be handed over to the 6th respondent within one week from today.

15.3. The 6th respondent shall complete the investigation within a period of three moths thereafter. Of course, the 6th respondent is at liberty to seek any further time, if so required.

15.4. Subject to the result of the investigation by the 6th respondent, the respondents 1 to 5 are directed to initiate appropriate action including disciplinary action against the officer/officers who are connected with the impugned encounter which resulted in the death of Karnan.

15.5. Subject to the result of the investigation and the result of the follow-up proceedings refered to above against the officers concerned, the petitioner is at liberty to revive her request for compensation before the respondents 1 and 2, who shall consider the same and pass appropriate orders on merits.

16. The writ petition is disposed of accordingly. No costs. Connected WP.M.Ps. are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Chief Secretary,
The State of Tamil Nadu,
Fort St. George, Chennai-9.

2. The Home Secretary,
Fort St. George, Chennai-9.

3. The Collector,
Salem District, Salem.

4. The Revenue Divisional Officer,
Mettur, Salem District.

5. The Director General of Police,101 Radhakrishnan Salai
Mylapore, Chennai-600 004.

6. The Director,
Central Bureau of Investigation,Block No.3 Central Govt. Office Complex, Lodhi Road, New Delhi-110 003

7. The Superintendent of Police,
Salem.

8.Mr.N.Chandrasekar,
Public Prosecutor,
Central Bureau Investigation
High Court, Chennai 600 104

+1cc to Mr.P.V.S.Giridhar, Advocate Sr 33435
+1cc to Govt. Pleader Sr 33394

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